

MONTANA LEGISLATIVE HISTORY

Chapter 248 19 75

Bill H _____ S 38 Original bill & history ☒ C

H. Committee on Natural Resources

Hearing Date(s) Mar 06 ☒ C

Mar 13 ☒ C

_____ ☐ C

_____ ☐ C

Date Out _____ ☐ C

S. Committee on Natural Resources and Fish & Game

Hearing Date(s) Jan 28 ☒ C

_____ ☐ C

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_____ ☐ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

1 *Senate* BILL NO. *38*
 2 INTRODUCED BY *Norman Brown (REQUEST H.F.S.)*

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH PROCEDURES
 5 FOR MAINTAINING THE CONFIDENTIALITY OF TRADE SECRETS
 6 INVOLVED IN AIR POLLUTION CONTROL PROCEEDINGS; PROVIDING
 7 EMISSION DATA SHALL NOT BE CONSIDERED CONFIDENTIAL FOR THE
 8 PURPOSE OF THE CLEAN AIR ACT; AMENDING SECTION 69-3918,
 9 R.C.M. 1947."

10
 11 LET IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 69-3913, R.C.M. 1947, is amended to
 13 read as follows:

14 "69-3913. Confidentiality of records. (1) Records or
 15 other information concerning air contaminant sources which
 16 are furnished to or obtained by the board or department, ~~and~~
 17 ~~which, as certified by the owner or operator, relate to~~
 18 ~~production or sales figures or to processes or production~~
 19 ~~unique to the owner or operator or which would tend to~~
 20 ~~affect adversely his competitive position, are only for the~~
 21 ~~confidential use of the board or department in the~~
 22 ~~administration of this act, unless the owner expressly~~
 23 ~~agrees to their publication or availability to the general~~
 24 ~~public; are a matter of public record and open to public~~
 25 use. However, any information unique to the owner or

1 operator of an air contaminant source which would, if
 2 disclosed, reveal methods or processes entitled to
 3 protection as trade secrets, shall be maintained as
 4 confidential if requested by the owner or operator and found
 5 to be a trade secret by the board. Any trade secrets not
 6 intended to be public when submitted to the board or
 7 department shall be submitted in writing and clearly marked
 8 as confidential. However, emission data shall never be
 9 considered confidential for the purposes of this section.

10 (2) This section does not prevent the use of records or
 11 information by the board or department in compiling or
 12 publishing analyses or summaries relating to the general
 13 condition of the outdoor atmosphere, if the analyses or
 14 summaries do not identify an owner or operator or reveal
 15 information made otherwise confidential by this section."

-End-

Senator Galt asked that in reference to Senator Smith's problem present in his county, there must be some authority to force the county attorney to enforce his duties to act on such a violation. Mr. Klinger stated that the Department could alleviate this sort of problem when they had the jurisdiction to do so.

CONSIDERATION OF SB 38: An act to establish procedures for maintaining the confidentiality of trade secrets involved in air pollution control proceedings.

Senator Norman, also sponsor of this bill, stated that the bill deals with the area that had been discussed -- the Clean Air Act for pollution. This bill concerns itself with emission data and the confidentiality of that data.

Senator Norman also brought the point out that the Feds are taking action on this particular legislation through several jurisdictions in court. If the state doesn't do something about it, the federal government will. Norman also expressed the concern of people living in polluted areas who should have the right to know what they are breathing. This bill will make this data public and the people will be able to determine whether this emission level is acceptable or whether the industries is causing the pollution and what they care to do about it.

Senator Norman also stated that it would shift the burden the Department of Health undertakes. The Department would be no longer compelled to keep the data confidential.

Joy Bruck, League of Women Voters, testified in support of the bill.
(See Attachment #1)

Senator Flynn asked to hear the opponents of SB 38:

L. MacDonald, Anaconda Company, stated that he didn't object to the board having the information they need. They do, however, object to supplying information to various organizations who want to harass industry.

Mr. Robert Holding was also in opposition to this bill. He cannot see the need for the bill. He stated the emission data could be made available

to anyone who wanted to take action. It would just be an additional harassment to industry. Mr. Helling doesn't see where anyone is being denied of anything.

Senator Norman feels that the public needs to know what pollutants exist instead of having to go to court to fight it out.

Mr. Leonard Hodshey feels that one of the tyrants of this particular bill if pollutants were made public, patents and trade secrets may as well be thrown away.

The committee was opened for questions.

Mr. Klinger told the committee that they were concerned with the emissions, the affluents, and the work place contaminants. The EPA has informed the governor that we must have this confidentiality of omission.

DISPOSITION OF SB 37: Senator Watt moved that SB 37 be amended as follows: Amend page 2, section 1, line 1, after the word "appropriate" by striking the word "remedy" and inserting "civil remedies". The motion was seconded by Senator Manley, and it carried.

Senator Manley moved for SB 37 AND AS SO AMENDED, DO PASS. The motion was seconded by Senator Smith. A roll call vote was taken with Senators Galt and Roskie voting against the motion.

After action was taken on the bill, the committee proceeded to discuss it. Senator Roskie stated that he was convinced that the Department will ask for more staff and money.

Senators Watt and Colberg both agreed that there was a need for this bill. Senator Watt stated that he appreciated Senator Roskie's concern, but felt this was the only bill to conquer the problem such as the one that Senator Smith faced.

Senator Roskie was concerned because it opens the door to have the state come in anytime on the request of the local authorities. There would be more power upward to the Department that probably could be handled locally. Roskie felt that perhaps sometimes the state or federal government could help out on some cases. He feels that independent action of local county attorneys should be the direction to take.

DISPOSITION OF SB 38: Senator Jergeson moved for SB 38 DO PASS. He stated his support of the bill because he feels people should have the right to know what pollutants they are breathing in the air.

Senator Colberg feels people are very concerned with air pollution -- especially in Missoula. He feels the problem must be faced up to soon. The average citizen needs to know what pollutants are present in the air.

Senator Roskie feels the process they use should remain secret. He stated he was unsure if this bill provides for any difference when the Board is allowed to decide.

Senator Watt fails to see where companies such as the Anaconda Company will be affected by this bill because of patent problems.

Senator Manley stated that he doesn't care of the company's trade secrets, but is much more concerned with the air people are breathing.

Chairman Flynn asked Debbie Schmidt, Legislative Researcher, to research the trade secrets in the codes.

Senator Watt suggested that the bill be acted upon; Senator Manley seconded Jergeson's motion for SB 38 DO PASS. The motion was carried unanimously.

ANNOUNCEMENTS: Senator Flynn announced that a meeting would be scheduled this Saturday to consider SB 128.

ADJOURNMENT: There being no further business to discuss, Senator Flynn adjourned the meeting at 11:00 a.m.

A handwritten signature in cursive script, reading "Elmer Flynn", is written over a horizontal line.

SENATOR ELMER FLYNN, CHAIRMAN

League of Women Voters of Montana

Testimony

S2338

Confidentiality of Trade Secrets

1975

I am Joy Eruck, presenting testimony in support of S2338 for the League of Women of Montana.

[^]
VOTERS

A section of the League's air quality position calls for full disclosure of pollution data. We agree that an owner or operator of an air contaminant source is entitled to protection of methods and ~~processes~~ ^{processes} referred to in this bill as "trade secrets." But, by revising the bill so the board is also included in the decision concerning what constitutes a trade secret, and by the provision that emission data shall never be considered confidential, we know the public is getting full disclosure of pollution data.

All information concerning emission of pollutants is necessary so that its effects can be properly evaluated. We all have an obligation to protect the health and well-being of the public. Therefore, we urge your support of this bill.

SENATE COMMITTEE NATURAL RESOURCES AND FISH & GAME

Date January 28, 1975

Bill No. SB 38

Time 10:50

NAME	YES	NO
COLBERG, Richard A., Vice-Chairman	X	
JERGESON, Greg	X	
MANLEY, John E.	X	
WATT, Robert D.	X	
GALT, Jack E.	X	
ROSKIE, George F.	X	
SMITH, Edward B.	X	
FLYNN, Elmer, Chairman	X	

MARCENE MARSH
Secretary

ELMER FLYNN
Chairman

Motion: Senator Jergeson moved that SB 38 DO PASS. The motion was seconded
by Senator Manley and carried.

(include enough information on motion--put with yellow copy of committee report.)

SENATE OF THE UNITED STATES
NATURAL RESOURCES AND FISH & GAME
NORTHWESTERN STATES

MR. PRESIDENT:

January 28, 1938

We, your committee on NATURAL RESOURCES AND FISH & GAME

having had under consideration SENATE Bill No. 38

The committee on Natural Resources and Fish & Game of the Senate of the United States, at its first meeting on January 28, 1938, at 9:30 a.m. in Room 400 of the United States Capitol Building, Washington, D.C., held a public hearing on the bill, H.R. 10000, entitled "An Act to provide for the conservation and management of the natural resources of the United States, and for other purposes."

Mr. J. H. Rogers, a member of the bill, stated that the bill was introduced in the House of Representatives at its first meeting on January 28, 1938, at 9:30 a.m. In the title and body of the bill, the word "measurements" should replace it.

Mr. J. H. Rogers, State Logging Company in Dec. 1937, expressed his opinion that the idea of the bill is good. A few things are needed for everyone interested and involved in the bill. The full estimate of the bill is as follows:

Respectfully report as follows: That SENATE Bill No. 38

Mr. J. H. Rogers testified that the bill is a good one and that it is a kind of control.

Mr. J. H. Rogers, State Logging Company, said there is a need for a bill like this.

Mr. J. H. Rogers said the members about the bill are to make their estimations as received. He has also talked with Mr. Rogers who makes the bill.

Mr. J. H. Rogers, Department of Natural Resources, said that there is a need for a bill like this. For one, there is a fiscal problem. The Department of Natural Resources has many problems presently included in the bill within the Department and that any action on the legislation will be a big step.

Mr. Earl Solmonson, Chief of the Forest Management Bureau, pointed out some of the problems this bill has. He feels the bill could be difficult to administer at this time since there are no set standards or scales for the DO PASS. Intermining log volume required by law or agreed by the various agencies or lumber industries. The bill should be expanded to include

Earl Solmonson

RICHARD KLINGER, Department of Health, stated he felt that in the enforcement of the Clean Air Act there are many instances where they would choose a civil penalty. He said the language applied in the civil section now uses criminal law terms. He said this would give their enforcement program a good deal of impetus.

No other proponents or opponents. All questions were to be held until the testimony on all four bills was given.

B 38 SENATOR NORMAN said this is a clean-up bill in his view and it has to do with confidentiality or trade secrets. He said federal law requires that all emission data be disclosed, and this would have some effect on trade secrets. Right now if a firm wishes some emission data to remain secret, claiming it is a trade secret, it is without further ado. This bill would give the Health Department the power to make the determination of whether it really should be a trade secret.

RICHARD KLINGER, Department of Health, said because of the need to monitor and inspect under the Clean Air Act, emissions cannot be considered confidential and we need a provision saying so. The burden should be placed on the polluter.

JOY BRUCK, League of Women Voters, was the next speaker and a copy of her testimony is exhibit 1.

WILL STERNHAGEN, Anaconda Co., spoke next and his testimony is exhibit

ACK REHBERG, Montana Petroleum Association, requested that the members listen carefully to what Mr. Sternhagen just said as their company is concerned for the same reason. He requested if the committee were to look favorably on the bill, they should consider an amendment that if request for a trade secret is denied by the board that the affected company would be immediately notified so they could appeal to the court.

Senator Norman in his rebuttal stated that Mr. Sternhagen is saying that Anaconda Co. should determine what is a trade secret--and he said they felt the Health Department or courts should make this decision and not someone who is in the business. Senator Norman said that Mr. Rehberg was requesting an amendment which is already in the statutes.

2A.1

League of Women Voters of Montana

Testimony SB 38 Trade Secrets

1975

I am Joy Bruck, representing the League of Women Voters of Montana.

We realize owners and operators of air contaminant sources are entitled to protection of methods and processes referred to as trade secrets, but we also realize that we all have an obligation to protect the health and well-being of the public by the full disclosure of pollution data.

All information concerning emission of pollutants is necessary so it's effects can be properly evaluated. By revising this act so the board is included in the decisions concerning what constitutes trade secrets, and by the provision that emission data shall never be considered confidential, we know the public will be getting full disclosure of pollution data. INFORMATION.

Therefore, we urge your support of this bill.

NAME BILL STERNHAGEN

Bill No. SB 38

ADDRESS _____

Date March 6, 1975

WHOM DO YOU REPRESENT? ANACONDA COMPANY

SUPPORT _____ OPPOSE X _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

We object to a state board taking over the process of the courts in determining if something is a trade secret. How do they know what a trade secret is? A lot of money is invested in trade secrets and they should be properly protected. What kind of protection would they have from agency employees telling others what they have found and what the trade secrets are? After the fact protection--and that is a little late as the secret would be out. He mentioned Anaconda's new plant which is one of the cleanest he said known pollution wise. He said this is definitely a harassment of trade secrets--they will not be protected at all by this bill.

Ex. 8

EXXON COMPANY, U.S.A.

POST OFFICE BOX 1163 • BILLINGS, MONTANA 59103

REFINING DEPARTMENT
BILLINGS REFINERY

March 5, 1975

FOR PRESENTATION BEFORE MEMBERS OF THE HOUSE NATURAL RESOURCES COMMITTEE -
March 6, 1975.

S.B. 38 - To establish procedures for maintaining the confidentiality of trade secrets.

My name is Arthur Greathouse. I am a Senior Staff Engineer for Exxon Company, U.S.A., responsible for coordination of Environmental Affairs at Exxon's Billings Refinery.

As presently written, just how the public will benefit materially from the substitute language proposed by S.B. 38 is not readily apparent. What can be seen, however, is that industry will find the modified language more difficult to work with than the present law. The result will inevitably be that more information will find its way into the public domain which, without certain safeguards, could result in unjust economic injury to some of the state's industries.

The proposed changes provide that unique trade information "shall be maintained as confidential if requested by the owner or operator and found to be a trade secret by the board." At the very least, we respectfully submit that language should be added which requires the board to notify the owner or operator that his request for confidentiality has been denied. Furthermore, language should be added requiring the board to maintain confidentiality for a time sufficient for the owner or operator to appeal the decision to an appropriate court.

One other aspect deserving this committee's attention is the specific language "emission data shall never be considered confidential....." (emphasis added). In certain cases, though rare and isolated, someone in a competing industry and skilled in the art might be able to circumvent substantial technological development costs by deduction from emission data. Since it is not always possible to obtain protection of expensive technology under the patent laws, we respectfully request that you modify the language to something less final than "never" to allow for such a contingency.

FRANK GUAY, County Commissioner of Flathead County, stated they do have a large influx of people who are not always sympathetic to their problem. He felt the local control provided here would be better than that provided by Rep. Bardanoue's HB 153. He said too often they run into regulations that may work well in the eastern part of the state but not in their area. He liked the fact that if people run into an unresponsive county commissioner or city official they can go to the Department of Natural Resources for help. He expressed a fear that their planning board may need extra time and if this bill were made law now they wouldn't be ready to implement it. He suggested July 1, 1976, as an effective date.

LYVERNE CRANMORE, Montana Farm Bureau, Ravalli Farm Bureau, spoke in support of the bill and a copy of her testimony is exhibit 14. Just for herself, she said she'd like to say a word in support of a segment of the population that she is happy to be a member of--the cowboys. She said a derogatory statement had been made the previous day on the floor of the House. She said they may not have the intelligence that comes from reading books and swallowing them whole but common sense they have.

GORHAM SWANBERG, Montana Railroad Association, stated they support the bill.

SUE BRYAN, Montana League of Women Voters, spoke in support and a copy of her testimony is exhibit 15.

Senator Brown said he closed.

Questions were asked by the committee. Rep. Sheldon suggested the putting in of an immediate effective date; and since there are no regulations now, it would in effect be a moratorium until such regulations were drafted--and would that be bad? Mr. Cochrane, Mr. Guay and Mr. Schoonover felt this might be advisable; Sen. Brown said he would like to discuss that. Mr. Schoonover would like to have removed "whichever is greater" on page 5, dealing with number of people needed for a complaint.

EXECUTIVE SESSION

SB 38 Rep. Jim Moore discussed the amendment which is exhibit 16. Rep. Richards moved SB 38 as amended be concurred in. Motion passed unanimously except for those absent (Reps. Day, Fishbaugh, Meloy and Jack Moore).

SB 39 Rep. Stoltz moved SB 39 be concurred in. Motion passed unanimously. Same absent as above.

SB 51 Rep. Jim Moore moved SB 51 be concurred in. Motion passed unanimously with same absent as above.

ex. 16

ROUGH DRAFT

Amend Senate Bill No. 38, third reading copy, as follows:

1. Amend page 2, section 1, subsection (1), lines 4 and 5.
Following: "if"
Strike: "requested by the owner or operator and found to be a trade secret by the board"

Insert: "so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgement action to establish the existence of a trade secret, if he wishes such information to enjoy confidential status. The department shall be served in any such action, and may intervene as a party therein"

My proposed would be to pass HB 37 & HB 51
in their present form & HB 38, as amended.

SENATE BILL NO. 38

INTRODUCED BY NORMAN, BROWN, (BY REQUEST OF
THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES)

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH PROCEDURES
FOR MAINTAINING THE CONFIDENTIALITY OF TRADE SECRETS
INVOLVED IN AIR POLLUTION CONTROL PROCEEDINGS; PROVIDING
EMISSION DATA SHALL NOT BE CONSIDERED CONFIDENTIAL FOR THE
PURPOSE OF THE CLEAN AIR ACT; AMENDING SECTION 69-3918,
R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-3918, R.C.M. 1947, is amended to
read as follows:

"69-3918. Confidentiality of records. (1) Records or
other information concerning air contaminant sources which
are furnished to or obtained by the board or department, ~~and
which, as certified by the owner or operator, relate to
production or sales figures or to processes or production
unique to the owner or operator or which would tend to
affect adversely his competitive position, are only for the
confidential use of the board or department in the
administration of this act, unless the owner expressly
agrees to their publication or availability to the general
public.~~ are a matter of public record and open to public

use. However, any information unique to the owner or
operator of an air contaminant source which would, if
disclosed, reveal methods or processes entitled to
protection as trade secrets, shall be maintained as
confidential if requested by the owner or operator and found
to be a trade secret by the board SO DETERMINED BY A COURT
OF COMPETENT JURISDICTION. THE OWNER OR OPERATOR SHALL FILE
A DECLARATORY JUDGEMENT ACTION TO ESTABLISH THE EXISTENCE OF
A TRADE SECRET, IF HE WISHES SUCH INFORMATION TO ENJOY
CONFIDENTIAL STATUS. THE DEPARTMENT SHALL BE SERVED IN ANY
SUCH ACTION, AND MAY INTERVENE AS A PARTY THEREIN. Any
trade secrets not intended to be public when submitted to
the board or department shall be submitted in writing and
clearly marked as confidential. However, emission data
shall never be considered confidential for the purposes of
this section.

(2) This section does not prevent the use of records or
information by the board or department in compiling or
publishing analyses or summaries relating to the general
condition of the outdoor atmosphere, if the analyses or
summaries do not identify an owner or operator or reveal
information made otherwise confidential by this section."

-End-

REFERENCE BILL